
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

JAMES J. KINGSTON,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:17-cv-68-JNP-EJF

District Judge Jill N. Parrish

On February 20, 2018, Magistrate Judge Evelyn J. Furse issued a Report and Recommendation that this court affirm the Commissioner's August 16, 2016 decision finding Mr. Kingston disabled and entitled to benefits as of July 24, 2015. *See* ECF No. 24. The Report and Recommendation advised the plaintiff, Mr. Kingston, that a failure to object within fourteen days of service may constitute waiver of objections upon subsequent review. Mr. Kingston did not file an objection.

Mr. Kingston's decision not to object waived any argument that the Report and Recommendation was in error. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). However, the court need not apply this waiver rule as a procedural bar if "the interests of justice so dictate." *Id.* (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). The court has reviewed the Report and Recommendation and its conclusion that the Commissioner's determination was supported by evidence in the record and did not constitute an abuse of discretion. *See* 42 U.S.C. § 405(g) ("The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision

of the Commissioner of Social Security, with or without remanding the cause for a rehearing.”). The court concludes that the Report and Recommendation is not clearly erroneous and finds that the interests of justice do not warrant deviation from the waiver rule. Therefore, the court adopts in full the Report and Recommendation.

Accordingly, the court ORDERS:

1. The Report and Recommendation (ECF No. 24) is ADOPTED IN FULL.
2. The court affirms the decision of the Commissioner of Social Security finding Mr. Kingston disabled and entitled to benefits as of July 24, 2015.

Signed March 13, 2018

BY THE COURT



Jill N. Parrish
United States District Court Judge